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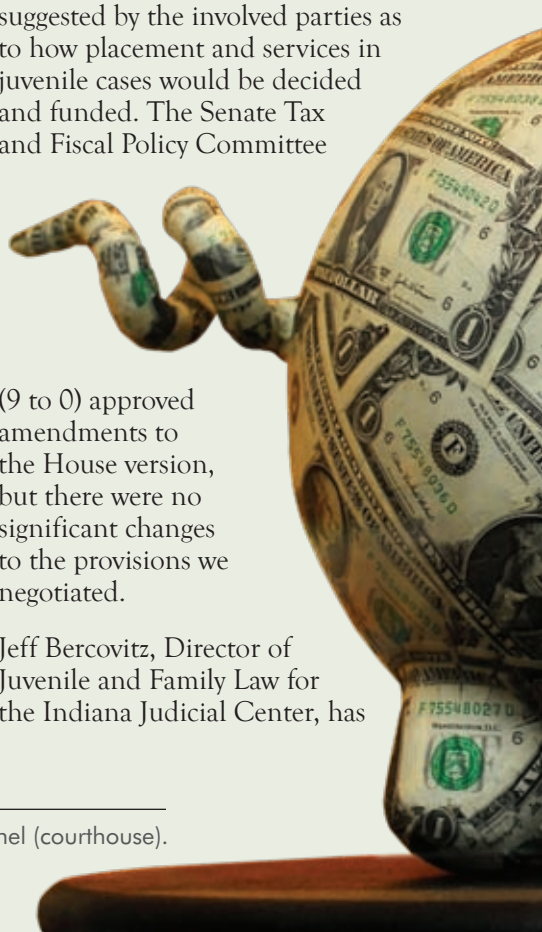
YOU CAN BANK ON IT

State Funding for Juvenile Services Will Relieve County Burden

History was made in the last session of the Indiana General Assembly. The state of Indiana will now assume the cost of juvenile services. The counties have had this burden and taxpayers traditionally picked up the tab through their local property tax bills. House Enrolled Act 1001, P.L. 146, the comprehensive property tax relief plan, contains provisions for the state payment of the cost of juvenile services. The foundation of this new law is property tax relief. The local family and children's levy in each county will be eliminated and the State of Indiana general fund will assume the costs for juvenile programs and services. As the state rather than the counties will be assuming the costs of placement, programs and services in juvenile delinquency and CHINS cases, the law requires that costs be subject to significant checks and balances in order to control the rate of growth. During negotiations with the governor's office, and in presentations to the various legislative committees, judges maintained that the payment vehicle for placement, programs and services must allow for judicial decisions that serve the best interests of children and provide respect for the due process of law.

Judges, represented by members of the board of the Indiana Council of Juvenile & Family Court Judges, and the Juvenile Justice Improvement Committee of the Judicial Conference of Indiana led by Judge Charles Pratt, were involved in negotiations about the details of child welfare funding legislation. The Indiana Department of Child Services (DCS), representatives from the governor's office, and the Indiana Association of Residential Child Care Agencies (IARCCA) participated in the negotiations with the judges. We reached a series of compromises and resolutions as to the details of this proposed legislation.

As passed by the House (93 to 1), the bill contained the basic framework suggested by the involved parties as to how placement and services in juvenile cases would be decided and funded. The Senate Tax and Fiscal Policy Committee (9 to 0) approved amendments to the House version, but there were no significant changes to the provisions we negotiated.



Jeff Bercovitz, Director of Juvenile and Family Law for the Indiana Judicial Center, has

COVER PHOTOS: Robert Ahrens & Lindsey Borschel (courthouse).

written an excellent, and more detailed, summary of H.E.A. 1001, P.L. 146, which is included in the Judicial Center's legislative update of April 14, 2008 at:

www.legislativeupdate.blogspot.com.

This article focuses on some of the most significant provisions.

The State general fund will pay costs of certain placement, services, and programs for both juvenile delinquents and CHINS. The general fund of the county in which the juvenile case was first filed will be responsible for payment of the costs not paid by the state.

The new law provides for the appropriation of $239,908,502 to the DCS for funding to pay for child services delivered after December 31, 2008 and ending before June 30, 2009, with state augmentation if necessary. The state is required to make payment to service and placement providers within 60 days of billing. The provisions of the legislation related to payment for juvenile services will be effective January 1, 2009.

In a CHINS case, the court will enter its dispositional decree, after consideration of recommendations by DCS, parents, guardian ad litem (GAL/CASA), and all interested parties. If the court enters a dispositional decree other than one recommended by the DCS, the court must enter findings that the DCS recommendation is unreasonable based on the facts and circumstances of the case, or contrary to the welfare and best interest of the child. DCS has the right of an expedited appeal to the Indiana Court of Appeals.

In a juvenile delinquency or status case, the court will enter its dispositional decree, after consideration of recommendations by probation, parents, GAL/CASA, and all interested parties. If the state fund is to pay for any placement, program or services, DCS will have a right to submit its recommendations. If DCS disagrees with the court's decree, the court must enter written findings as described above and DCS again has the right of an expedited appeal to the Indiana Court of Appeals.

In a juvenile delinquency case, if the state fund is to pay for placement, services, or programs ordered, the probation office must provide DCS with a copy of the preliminary and predispositional reports for review. Also, probation must conduct a risk and needs assessment, compile information to assist in determining if the child is eligible for federal Title IV-E funding, and provide this information to DCS.

Any modifications of the dispositional decree are subject to the same procedures as above. DCS must recommend or approve, or the court must enter necessary findings, for the state to pay for predispositional services, programs, and placements. In delinquency cases, DCS must be given pre-notice of predispositional placements, but the court can immediately order the placement upon finding that an emergency exists.

In order for the state fund to pay for services, programs or placement, the court must enter the necessary findings to establish the child's Title IV-E eligibility. Judges will meet this requirement if they use developed and approved model orders available through the Indiana Judicial Center.

To learn more about other new legislation of interest to the Judiciary, see page 10.

In all cases, the state will pay for the service, program or placement if the provider is Title IV-E or Title IV-B eligible. If the provider is not Title IV-E or Title IV-B eligible, the state will only pay if DCS has recommended or approved the services, program or placement.

The state will pay out-of-state providers for services, programs or placement that are Title IV-E or Title IV-B eligible, if: (1) DCS has approved it; or (2) the court makes written findings, based on clear and convincing evidence, that the out-of-state placement is appropriate because there is not a comparable in-state placement; or (3) the location of the home or facility is within a distance not greater than 50 miles from the county of residence of the child.

The state will not pay for placement, programs or services at secure detention facilities. The state will pay for the costs of juvenile placements at the Indiana Department of Correction.

The law was drafted to provide for the maximum amount of federal reimbursements for juvenile services. Counties will be responsible for the costs of juvenile services in those cases where the court and probation department do not make the effort necessary to qualify for such reimbursements. Therefore, it is imperative for judges and their juvenile probation officers to follow the requirements needed to maximize state funding of juvenile services.

We appreciate the hard work of those judges and judicial staff who assisted in negotiations and dealings with the legislative and executive branches of state government with respect to this historic legislation. ■

By The Honorable Lynn Murray,
Judge, Howard Circuit Court
President, Indiana Council of Juvenile and Family Court Judges

HOOSIER HOSPITALITY IN THE UKRAINE:

Educating Judges & Journalists

It is a fledgling democracy that gained freedom from the crumbling Soviet Union in 1991. Since then, a total of 40 journalists have been murdered. Just last year four judges were removed from the Ukrainian bench on bribery charges.

According to lawyer surveys, seventy four percent of them believe corruption envelops the judiciary, and one in five respondents reported giving bribes to judges. Distrust is common between bench and media. Against this backdrop, I traveled there in March to help improve court-media relations and increase the transparency of court operations.

Chemonics International, a non-profit group seeking to enhance democracy around the world, sponsored my journey. Former Indiana Court of Appeals Judge Betty Barteau worked in Russia as an executive for Chemonics focusing on judicial education.

For several years, Chief Justice Randall T. Shepard has hosted visits to Indiana by Ukrainian judges. During last fall's visit I spoke to the judges about court and media relations. Natalia Petrova, Deputy Chief of Party for the Chemonics' Ukrainian Rule of Law Project, was one of the visitors. She asked if I might be willing to travel to Ukraine to make a similar presentation. In late January, one of her staffers, Andriy Gorbal, made the final arrangements. He would become my "handler" during the visit.

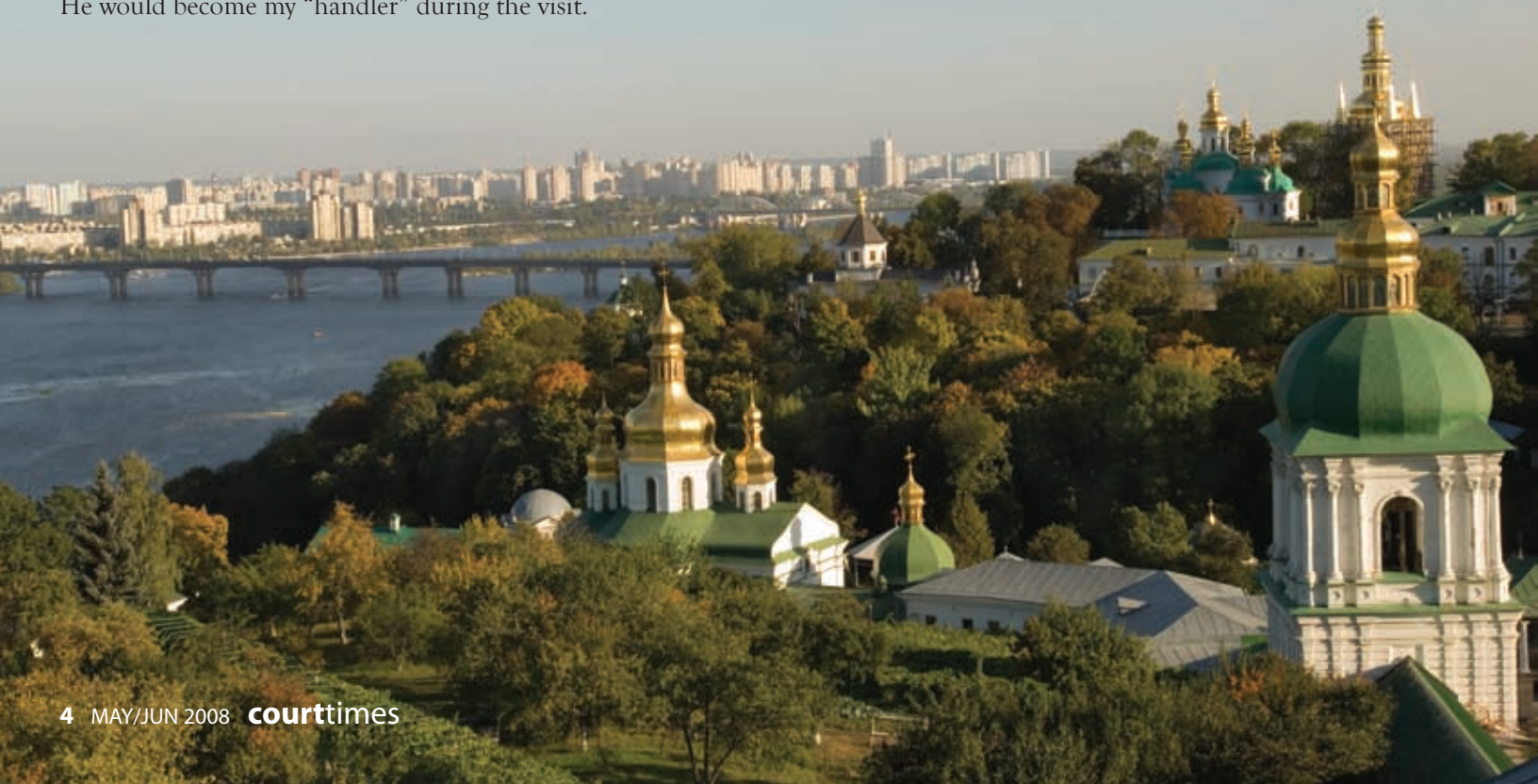
Ukraine is a tough place to be a judge, and a journalist.

I began my trek with a nine-hour flight from JFK to Kiev, the capitol city in a country the size of Texas with a population in excess of 40 million. Ukrainians continue to shake off what is commonly referred to as "the Soviet times." The people revel in the brisk, vibrant, sometime excessive, hallmarks of traditional western capitalism.

Through the centuries, many outsiders have dominated its inhabitants, including Scandinavians, Ottomans, Mongols, Tartars, Turks, Cossacks, and Poles. Russians gained control during the reign of Catherine the Great, which began in the late 18th century. Following World War II, most of Ukraine came under Soviet control as a formal part of the USSR.

Ukraine was the breadbasket of Eastern Europe in the early 1930s with overflowing grain silos. Despite this reality, Stalin systematically starved more than five million Ukrainians through his collective farm policies. In the decades that followed, Ukraine remained under Soviet influence until it achieved independence in 1991.

Even today it remains conflicted toward Russia, despite democratic governments in both countries.



Ukrainian is the official language, but most people also speak Russian. In the north and west of the country, Ukrainian is the dominant language. In the south and east, Russian is the primary tongue.

When the Soviet Union fell, some communities rushed to tear down street signs and memorials honoring the heroes of the Soviet Union. The main square, Red October Square, was re-christened Independence Square. But a major street in downtown Kiev is still named Red Army Street, after the Soviet army. In the eastern city of Donetsk, a huge statute of Lenin remains a focal point in a large downtown park.

Some of the Ukrainian conflict is direct. Russia has threatened to cut off Ukraine's supply of natural gas. Ukraine now uses Soviet built radio towers, constructed originally to block the US Voice of America, to jam Russian television signals.

Conflicts are less direct but still palpable between the media and the judiciary. Our first session was with Ukraine intermediate appellate court judges. Our goals were to educate them about court precedents and the media, and to remove some of the mystery behind the news media. I offered a perspective on US court-media relations and tried to make it relevant to the Ukrainian experience.

PHOTOS: (above) Remondini poses for a photo with his Ukrainian counterpart, Iryna Chalyan, public information officer for the Supreme Court of Ukraine; (left) Kiev skyline and Dnieper River.

Ukraine courts are generally open to the public and, in many cases, cameras are allowed. The twenty-four appellate judges had significant experience with the media. But an informal poll showed that none "trusted" the media as an institution. Only a handful trusted individual news operations, and just two or three trusted individual reporters. The common complaints about the media were: they told only one side of the story; they focused only on sensational cases; they have a lack of knowledge about the law; and, yes, they are quite pushy.

Several of the judges, including a member of the Ukraine Supreme Court, were remarkably progressive about media relations. These jurists urged their colleagues to reach out and educate the reporters who cover their courts.

The journalists had their own interesting perspectives. The common complaints about the judiciary were: the process is too complicated and takes too long; judges never explain their rulings; and judges are inconsistent about when cameras can and cannot be used.

Their knowledge of standard court procedures falls well below that of their U.S. counterparts. This is partially explained because of their relatively new experience with open government. They have had it only since 1991, while our experience is over two centuries old. Journalists there have a real hunger for information, but it seems as if the courts and the journalism profession were doing little to provide it.

Journalists do have a difficult time in the Ukraine. Vestiges of an indifferent or uncooperative government bureaucracy remain from Soviet times. And there is a level of personal danger that exists for some journalists, as demonstrated by the number of murders since 1991.

The most high-profile case involved an investigative, on-line journalist, Georgiy Gongzade. In 2000, his decapitated body was found in remote woods. Cassette tapes surfaced later that purportedly record the former Ukraine president as saying something should be done about Gongzade. Three suspects connected with the government's internal security apparatus were later charged with his murder. The most recent court hearing was continued. The court bureaucracy was overwhelmed and woefully unprepared for the onslaught of media that descended on Kiev's smallest courtroom.

Corruption is a major problem at many levels of Ukraine society. Both the media and the legal system are part of the problem. Lawyers and judges talk about how easy it is to "buy" a good story. And one lawyer I met told me that only three of her law school professors refused to take bribes. While many do pass good students on their merits, most gladly exchange a decent grade for cash. One of her former classmates was notorious for bribing professors for good grades. She is now a judge.

Many of the judges I encountered seemed genuinely interested in reform and creating a more open society. They are keenly aware of the obstacles ahead of them. They have a long history of authoritarian control and a very closed process. A young judge I met in Odessa remarked how distressed he was at the prospects for quick improvements. He was chagrined, remarking that the Supreme Court of Ukraine had only recently added a Public Information Officer.

I told him not to be too distressed, and pointed out the Supreme Court of Indiana only added a public information function in 1995. The entire process of engaging the media is relatively new to us as well.

"It may be new to you," he remarked sagely. "But we are in darkness." ■

By David J. Remondini,
Chief Deputy Exec. Director,
State Court Administration

(Editor's Note: Remondini was a reporter for The Indianapolis Star for fifteen years before joining the Supreme Court staff in 1995. He serves as the Supreme Court's liaison to the news media.)

PHOTO. Natalia Bratslavsky

JUDGES, CLERKS AND STAFF MUST REVISIT INDIANA'S FUNDAMENTAL PRINCIPLES OF COURT INFORMATION MANAGEMENT

Adherence to the principles of "No Backdated Entries" and "No Amendments, Corrections or Deletions to CCS Entries, Once Made" has become far more crucial in the electronic information age than we could have ever imagined when the Supreme Court in 1990 amended Trial Rule 77.

"When Trial Rule 77 was amended in 1990, over one hundred and fifty years of practice and tradition were revised. Recordkeeping in the courts of Indiana entered a new phase. Courts became 'information managers'." That was a byline for an article in the spring, 1996 issue of the *Indiana Court Times*. The article reiterated some of the essential elements of the new court information management system launched in 1990 with the amendment of Trial Rule 77.

In a memo to all trial courts, dated January 14, 1991, the then Executive Director of the Division of State Court Administration discussed the key elements of the new (paper at the time) recordkeeping system by saying:

> "Backdated Entries: An often-repeated anxiety expressed by many court employees is the problem of backdating entries in the Chronological Case Summary (CCS) and Record of Judgments and Orders (RJO). We appreciate this concern and recognize that, depending on prior practices, the principle of contemporaneous entry embodied in the new information management system might necessitate some courts to alter existing procedure. The primary function of the new judicial information management system is to accurately reflect the activity of a court and maintain information in a useful and correct format for as long as needed. The CCS should accurately describe the events of litigation, and the RJO should record significant decisions. In this system, the date of events is crucial, not only because of the necessity for honesty but also because it serves as a locator of information. The prior practice of backdating orders and inserting them in Order Books as delayed entries is inconsistent with the rule."

The letter goes on to provide examples, which still hold valid. Imagine that a person gets a certified copy of a CCS on December 1, which shows no activity in the CCS for the prior two weeks. On December 2, two orders are brought to the clerk's office and noted on the CCS. But because the judge's signature is dated November 28, the clerk backdates the CCS entry to November 28. This action makes the December 1 CCS entry misleading at best and fraudulent at worst.

For example, if an order dismissing a Motion for Summary Judgment is received in the clerk's office on May 15 but states that the judge signed it on May 10, the CCS should read "May 15, 2008—Received Order Dismissing Motion for Summary Judgment, signed May 10, 2008. RJO date—May 15, 2008." Anyone reviewing the CCS for the case prior to May 15 would see no information about a decision on the Motion for Summary Judgment. And if the court is posting its CCS information on the Internet, as are the majority of courts, that whole electronic world now knows that there has been no decision rendered on the Motion for Summary Judgment as of May 15, 2008.

Imagine the dismay and even worse reactions when, on May 16, the CCS suddenly shows that the motion was dismissed on May 10! Similarly, it takes little imagination to see how amending a CCS entry after it has already been posted on the Internet, without any explanation or notation of the change, would create two conflicting records, depending on the particular time that a user happened to view the entry.

The CCS is an official court record. Using dates that do not accurately reflect the date that an order is placed in the public record, plugging in CCS entries where they don't belong, and changing CCS entries without indicating that a correction is being made, are not just bad practices – they misrepresent the official record. If such practices are done repeatedly with intent to misrepresent the actual date of court activities, they could rise to the level of ethical violations.

Old habits die hard, particularly in the court setting where tradition, prior practices, and continuity are valued. Although these principles have been in place since 1990 and continue to be reiterated, some courts and clerks offices are still struggling to develop business processes that allow them to accurately reflect the chronology of events in a case. Thus, it is important for courts, clerks and their staffs to review periodically the Trial Rule 77 Quick Guide at

courts.in.gov/admin/pubs/tr77-quick-guide.pdf

In addition, Division staff is available to conduct on-site training on these and related information management topics. Requests for customized local trainings may be directed to Jim Walker, Director of Trial Court Management, at 317.234.5562 or

jwalker@courts.state.in.us. ■

By Lilia G. Judson,
Executive Director,
State Court Administration

MORGAN COUNTY COURTS:

THEIR EXPERIENCE WITH A HIGH PROFILE CASE

Satellite TV trucks and reporters waving microphones circle your courthouse like a calf-roper's lasso at a rodeo. Get ready—you are presiding over a "notorious" trial.

The time to think about how to handle such a trial should be long before the reporters arrive, and with a little thoughtful planning, you can successfully balance a defendant's right to a fair trial with the rights of a free press.

Judge Christopher Burnham of Morgan Superior Court #2 was honored with a Special Merit Award for his efforts during the high-profile trial of John R. Myers who was convicted of murdering Indiana University student Jill Behrman.

PLAN, PLAN, PLAN

According to Judge Burnham, being prepared, sharing information and getting help can make the entire process run much more smoothly.

"Be prepared, mentally and administratively, to handle media requests for information promptly and to the fullest extent you can under the law and administrative rules," said Judge Burnham. "Expect the 'what happens next' question from the media from the moment you open the case file and be prepared for it."

The judge highly recommends calling upon the Supreme Court to have an on-site media coordinator assigned to the trial.

Give everyone involved a roadmap having an outline of activities, including pretrial, motion hearings and trial dates. While changes may be needed, this kind of planning is effective.

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PHOTO. Bartlomiej Stroinski

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But, no matter how well things are planned, part of any plan should be preparing to roll with the punches.

"Stuff happens ... be ready for it," said Judge Burnham. "Remember that you are dealing with lots and lots of people in each high-profile case, with different emotions, agendas and human failings. You can't foresee everything that might go wrong during the case and the trial, but you can prepare yourself to expect the unexpected and not panic when 'stuff' happens."

Judge Burnham said pre-trial discussions with those who will be affected by the trial is very important. He offers these suggestions:

- Expect to need additional budget appropriations.
- Communicate cost estimates with your Council as soon as you can.
- Ask judges who have handled such cases about costs you might not have considered.
- Expect to need help from other judges and their staff, the Clerk of Court, the Sheriff (for security issues), your staff, the county council (for budget issues) and others.
- Have face-to-face meetings with those affected before and during the case.
- Keep everyone in the loop.

Judge Burnham said talking with other judges can also be extremely helpful, whether it's about lightening your caseload or their past experiences with notorious trials.

"Talk to judges who have handled such cases in the past. They have a wealth of advice and lessons learned that might keep you from having to learn everything from scratch. As I told one judge who was preparing for a high-visibility trial, you are most welcome to copy and plagiarize any of my orders and rulings if it will help you accomplish your task," he said.

BETWEEN THE GAVELS

While activity in the courtroom is a critical focus, a judge must also remember that they must take care of personal needs.

"Be calm. Take deep breaths, often. Try to find a way to relax and forget about the case when you have done all you can to prepare for the trial, and at the end of the trial day. Remember, you are the person to whom everyone will look for steady guidance and wisdom during the trial. So, stay professional, stay calm and do your best. That is all that one can ask of you", said Judge Burnham. ■

By Cindy Collier,
Communications Consultant, JTAC

Media Manag

When David J. Remondini traded his reporter's notebook for a legal pad, he brought his media experience with him as a new member of the bar. Indiana judges have found invaluable this merger of journalism and law. He has exhibited a special talent for assisting judges presiding over trials in the media spotlight. Most recently he acted as media spokesman for Judge Christopher Burnham, Morgan Superior Court 2, in the trial of Jill Behrman's accused murderer.

Remondini serves as the Chief Deputy Executive Director of the Supreme Court's Division of State Court Administration. He has acted as a media liaison for local courts for some high profile trials. His involvement allows judges and court staff to concentrate on the proceedings and helps judges protect the integrity of the trial.

The role of an on-site media liaison is to provide information to the press, and to do the following:

1. Provide the media with a single point of contact;
2. Keep the media from interfering with and potentially endangering the integrity of the trial; and
3. Relieve the trial judge, and the court staff, from the day-to-day management and responsibility of dealing with the media.

Part of successfully dealing with media requests during a high-profile trial includes understanding their needs. "When I was a reporter, I often noticed that some judges didn't seem to appreciate the pressure on reporters concerning the inflexibility of deadlines. Plus, it may seem simple, but TV needs to film something. Judges have to understand that and try to accommodate," Remondini said. "We have a checklist of things to remember in high-profile trials. We can provide outside help. Our trial courts do not have to go it alone when the media rolls into town."

gement for NOTORIOUS TRIALS

TIPS AND TOOLS

Judges should prepare before a high-profile trial begins, Remondini said, by considering all of the legal and logistical needs of those involved. A court should issue a pre-trial order outlining procedures that will aid the media and assist everyone involved.

- Technology, Technology, Technology – Use your Website
- Post trial updates and schedules
- Post documents online instead of faxing or emailing them
- Post a list of potential witnesses scheduled for the next day.
- Post notices on holidays
- Post court orders
- Assistance – senior judges can offer ideas, and help with the regular caseload. The Judicial Center can also provide assistance.
- Preparation – there may be profile stories about you. Have a headshot and bio ready.
- Parking – plan for media parking and accommodate regular courthouse business.
- Seating – determine courtroom seat assignments.
- Facilities – plan for adequate restroom facilities. Have a list prepared of local eating-places. Designate areas where the media can make phone calls and where TV crews can set up cameras.

BENEFITS OF GOOD MEDIA RELATIONS

While the OJ Simpson trial is an example of how things can go wrong in presiding over notorious trials, it also provides valuable lessons about what not to do, according to Remondini.

"The judicial community has a better understanding of how to deal with notorious trials because of what happened in the Simpson case. It was a learning experience because of the lessons it taught judges. Judges understand what might be in store and realize that they need extra help with a high-profile trial," Remondini said.

"Our goal is not to coddle or make the media's job easier. A defendant has the right to a fair trial. The public has a right to know. Media attention creates added pressure on the courts, and a media coordinator helps to insure that justice is served on both counts," Remondini said.

When rules and procedures are clearly spelled out and courts communicate regularly with members of the media, problems can be avoided. The result is a smoother trial proceeding.

"In any trial, no matter how well you plan or work, something will go wrong. If you have established good communication channels, it can help you address things quickly. Proper trial management in notorious trials can yield benefits beyond the end of any one case. Managing a trial correctly leads to a positive image of the judiciary," added Remondini.

If a trial court judge would like to utilize the assistance of a media coordinator, you must initiate the process by writing a letter of request to Chief Justice Randall Shepard.

Our courts have done well in this regard. The Hoosier State Press Association generally gives high marks to Indiana judiciary's handling of high profile trials. ■

By Cindy Collier,
Communications Consultant, JTAC

2008 INDIANA GENERAL ASSEMBLY

LEGISLATION IMPACTING THE *Judiciary*

The even numbered years are scheduled for the "short" sessions of the Indiana Legislature. The past session may have been short, but it was historic in many ways. Significant property tax relief was enacted for the first time since 1973. The state will be picking up the tab on juvenile services expenses traditionally the responsibility of local governments. Judge Lynn Murray has a detailed article on this topic on page 2 of this issue. But there were other laws that were passed by this General Assembly that also have an impact on the judicial branch of government. We are highlighting some of those in this article. Unless otherwise noted, the new laws will be effective on July 1, 2008.

Criminal Law

COOLING OFF PERIOD FOR DOMESTIC BATTERY

When someone is arrested for domestic violence, the facility holding the accused must keep that person in custody for eight (8) hours; and a court is without authority to release them on bail until at least eight (8) hours after arrest.

(S.E.A. 27, P.L. 44)

PAROLE ISSUES - NO PAROLE DISCHARGE PAPERS TO CLERK OF SENTENCING COURT

The parole board no longer must send a copy of its order discharging an offender from parole to the clerk of the sentencing court.

(S.E.A. 117, P.L. 46)

VIOLATION OF PROBATION AND HOME DETENTION

Under the probation revocation statutes, a court may impose one or more of the listed sanctions, codifying the decision in Prewitt v. State, 878 N.E.2d 184 (Ind. 2007). It also permits sentencing county authorities to place and supervise an offender on home detention who lives in an adjacent county.

(S.E.A. 139, P.L. 48)

DOMESTIC VIOLENCE: NO CONTACT ORDERS

As a condition of a person's executed sentence and bail, a sentencing court may order that person to refrain from any direct or indirect contact with an individual.

(S.E.A. 227, P.L. 104)

SEX OFFENDERS AND NEW OFFENSES, ELECTRONIC SENTENCING ABSTRACTS, AGGRAVATING SENTENCING FACTOR BASED ON VICTIM'S DISABILITY

SEX OFFENDERS AND NEW OFFENSES

The mandatory condition of probation that convicted sex offenders may not live within 1,000 feet of school property, is now defined as being 1,000 feet from a residence property line to the school property line.

It also adds several required conditions of probation for sex offenders.

AGGRAVATING SENTENCING FACTOR

Adds to the list of aggravating sentencing factors that the victim was disabled and the defendant knew or should have known that the victim was disabled.

ELECTRONIC SENTENCING ABSTRACTS

When a judge commits an offender to the Department of Corrections, the court must send to the Department the abstract of conviction, the judgment of conviction, and the sentencing order. The court may use any Department-approved electronic means to send this information.

(S.E.A. 258, P.L. 119)

BAIL - HEARING REQUIRED FOR CERTAIN SEX OFFENDERS

A court must conduct an open court bail hearing, prior to granting bail, for anyone who is:

1) a sexually violent predator or someone charged with an offense that would classify that person as a sex or violent offender; 2) a person charged with child molesting; or 3) person charged with child solicitation.

A bail hearing must be held within forty-eight (48) hours of arrest, unless there are some exigent circumstances to prevent it. At the conclusion of the hearing, the court must decide whether the factors listed in IC 35-33-8-4 warrant the imposition of additional bail.

(H.E.A. 1276, P.L. 74)

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PHOTO. Lindsey Borschel

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Family & Juvenile Law

PROPERTY TAX RELIEF (PROVISION ON JUVENILE COURTS)

This legislation (H.E.A. 1001, P.L. 146) provides for significant changes in the funding of child services and juvenile court procedures and has various effective dates on its many provisions. See "You Can Bank On It: State Funding for Juvenile Services Will Relieve County Burden" on page 2. The Judicial Center's summary of this bill can be found at: courts.in.gov/center/legislation/hea1001-summary.pdf.

JUVENILE OFFENDERS AND DETENTION CENTERS

MISDEMEANOR JURISDICTION OVER JUVENILES

Juvenile courts are granted jurisdiction over cases involving juveniles who commit misdemeanor traffic violations and in cases involving juveniles previously waived to a court with misdemeanor jurisdiction. It removes juvenile court jurisdiction over a juvenile who is at least 16 years of age and commits a felony handgun violation. It permits a juvenile court to waive jurisdiction if a child is charged with a felony for certain patterns of delinquent acts if the juvenile is at least 14 years of age and under other specified conditions.

JUVENILE DETENTION CENTERS

A representative or designee of the Indiana Criminal Justice Institute's compliance monitoring program will have reasonable access to inspect and monitor any facility used to house or hold juveniles to ensure maintenance of the requirements of the Juvenile Justice Delinquency Prevention Act.

(H.E.A. 1122, P.L. 67)

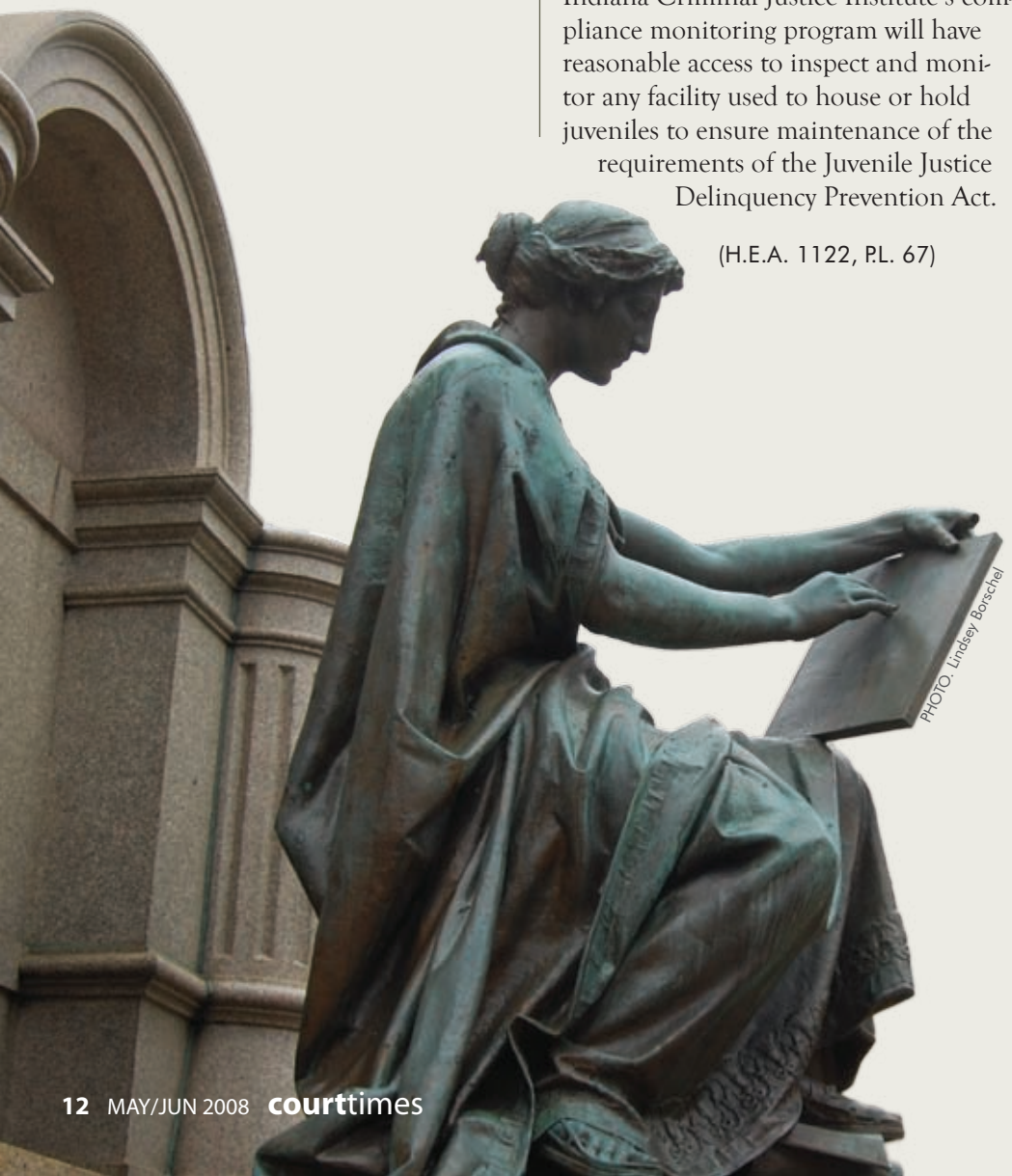

PHOTO: Lindsey Borschel

Judicial Administration

JUDGES' PENSIONS: COURT FEES AND STUDY OF JUDICIAL SELECTION PROCESS

COURT ADMINISTRATION FEE

The court administration fee is increased from $3 to $5 with the additional amount dedicated to the judges' retirement fund. Marion County Small Claims courts will distribute 40% of the collections of the court administration fee to the township trustee for use in funding court operations.

ST. JOSEPH COUNTY JUDGES

The Commission on Courts must study the selection of judges in St. Joseph County and report any findings and recommendations in its final report, which is due by November 1, 2008.

(S.E.A. 329; P.L. 122)

OTHER PROVISIONS CONCERNING COURTS

HARDSHIP LICENSES

A person may petition for a hardship driving license in the circuit or superior court of their home county, if the petitioner: 1) is a defendant in a pending case involving operation of a vehicle while intoxicated; 2) is on probation after being convicted of operating a vehicle while intoxicated; or 3) has had driving privileges suspended after being convicted of committing a controlled substance offense.

The petition may be filed only in the circuit court or superior court in which the case is pending or the petitioner was convicted.

POWERS OF A MAGISTRATE

A magistrate has the power to enter a final order or judgment in a proceeding involving the small claims docket of the court and to issue protective orders to prevent domestic or family violence.

FRANKLIN COUNTY COURTS

A second judge is added to the Franklin circuit court, and the Franklin circuit court magistrate is abolished, as of January 1, 2009.

MADISON COUNTY COURTS

The Madison county court is abolished as of January 1, 2009. The Madison superior court judges are increased from three to five on January 1, 2009. The two persons elected Madison county court judges on November 4, 2008, become the fourth and fifth judges of the Madison superior court.

MIAMI COUNTY COURTS

A second judge is added to the Miami superior court on January 1, 2009.

DEARBORN, JEFFERSON, OHIO, & SWITZERLAND COUNTY COURTS

As of January 1, 2009: 1) the Ohio County and Switzerland County joint superior court is abolished; 2) the Jefferson County and Switzerland County joint fifth judicial circuit is abolished; and 3) Jefferson County constitutes and continues in the fifth judicial circuit and Switzerland County constitutes a new ninety-first judicial circuit. The judge of the Dearborn and Ohio Circuit Court may appoint one full-time magistrate. The state is prohibited from paying any of the salary of a chief deputy prosecuting attorney appointed by the prosecuting attorney for the Switzerland County ninety-first judicial circuit.

ST. JOSEPH PROBATE COURT MAGISTRATES

The St. Joseph Probate Court Judge may appoint three (3) full-time magistrates instead of one (1).

(H.E.A. 1096, P.L. 127)

LAW ENFORCEMENT CONTINUING EDUCATION PROGRAM COURT FEE

The law enforcement continuing education program court fee is increased from $3 to $4.

(H.E.A 1318, P.L. 97)

The Judicial salaries fee increases by $1 effective July 1,2008. (IC 33-37-5-26)

Miscellaneous

COURTHOUSE PRESERVATION ADVISORY COMMISSION

Establishes the courthouse preservation advisory commission and the courthouse preservation fund. Requires the commission to provide assistance for courthouse related projects and to submit a report to the legislative council.

(S.E.A. 176, P.L. 85)

Salaries & Benefits

JUDGES' PENSIONS

The base computation of annual retirement benefits for certain participants in the 1985 judges' pension plan, who apply for retirement after December 31, 2009, will be determined by the salary being paid for the office that the participant held at the time of separation from service.

Participants who have retired before January 1, 2010, or for certain terminated vested participants, the benefit increases paid after December 31, 2009 are equal to the percentage increase of the salary being paid for the office the participant held at the time of separation.

A full-time magistrate serving on July 1, 2010 may elect to participate in the 1985 judges' pension plan.

A person who begins service as a full-time magistrate after July 1, 2010 participates in the 1985 judges' pension plan. If certain conditions are met, a magistrate participating in the 1985 judges' pension plan may purchase service credit for service earned in PERF as a full-time referee, commissioner, or magistrate. Also, under certain circumstances, a judge may transfer service credit earned as a full-time referee, commissioner, or magistrate after leaving a position covered by the 1985 plan.

(S.E.A. 329, P.L.122)

The legislative digest for all bills passed this session can be found at: www.in.gov/legislative/reports/2008/DIGEST_OF_ENACTMENTS.PDF.

If you would like to see the entire text of any law, you can find that information at: www.in.gov/apps/lsa/session/billwatch/billinfo.

The complete "Final Legislative Update," may be found at: courts.in.gov/center/legislation/2008/final-update.pdf. ■

By Mike McMahon,
Director of Research,
Indiana Judicial Center

and Michelle Goodman,
Staff Attorney,
Indiana Judicial Center

ELECTRONIC TAX WARRANT REGISTRY:
EASING THE BURDEN OF CIRCUIT COURT CLERKS

BENJAMIN FRANKLIN SAID: "IN THIS WORLD NOTHING IS CERTAIN BUT DEATH AND TAXES."

Occasionally people may fail to pay their state taxes due on income, sales, withholding or unemployment compensation. The Indiana Department of Revenue (IDOR) attempts to collect by giving the individual notice of the delinquent taxes, talking to and sometimes meeting with the taxpayer, and even by working out a payment plan. When these efforts are not successful, IDOR issues a tax warrant and files it with the Clerk of the Circuit Court in the individual's home county. This action creates a judgment lien against the taxpayer.

The Clerks of the Circuit Court in Indiana annually process more than 1.27 million tax warrants. The warrants are hand-recorded in almost one third of these counties. They are entered in a Judgment Book, a large hardbound journal used to record all judgments. In the case of a tax warrant, the information includes: the Tax Warrant Number, Issue Date, Taxpayer, Joint Taxpayer or DBA, Amount, and Filing Date. When this process is entered by hand, it can be very time-consuming.

IDOR sends tax warrants to the Clerk along with a check for $3.00 per warrant. When the taxpayer pays the tax, IDOR mails a Satisfaction of Lien to the Clerk, who then records it in the Judgment Book.

At the request of many clerks, the Division's JTAC created an electronic Tax Warrant Registry. It is being piloted in several counties. Upon completion of successful testing, it will be available at no cost to all Indiana counties. In order to use the software a clerk only needs Internet access. It is just that simple.

"Our new electronic Tax Warrant Registry will allow clerks to enter the tax warrant information through the Supreme Court's secure web-based system, INcite. An electronic Judgment Book entry is created automatically, information is transmitted immediately to the state, and clerks will more quickly be paid their $3 fee," said Mary L. DePrez, JTAC Director and Counsel for Trial Court Technology.

"JTAC has many initiatives, from the Odyssey Case Management System, to the electronic Protection Order Registry, to e-tickets for law enforcement officers, but many clerks have requested an electronic tax warrant system in order to save time and increase efficiency. And, for counties using the Odyssey case management system, the tax warrant case number, judgment and disposition will be recorded automatically in Odyssey," DePrez said.

The electronic Tax Warrant Registry system is scheduled for deployment in the following additional counties: Greene, Fulton, Owen, DeKalb, Randolph and Knox. ■

By Cindy Collier
Communications Consultant, JTAC

Counties currently using the electronic Tax Warrant Registry are:

COUNTY	WARRANTS PROCESSED	SATISFACTIONS PROCESSED
Benton	64	49
Carroll	131	131
Monroe	5090	2386
Porter	1155	489
St. Joseph	1539	523
Steuben	527	429
Vanderburgh	3019	1499
TOTAL	**11,525**	**5,506**

poweredby JTAC

For more information on these and other JTAC initiatives, see courts.IN.gov/jtac/programs.html

Adding CourTools to your JUDICIAL TOOLBOX

Tools are wonderful aren't they? As one of the two Court Analysts for the Division of State Court Administration, I use tools to help me in my job analyzing court-submitted data. Sometimes, I only need a pad of paper and pencil, or a basic calculator, to do my job. At other times, my sophisticated computer helps generate formulas in an Excel document.

Recently, the National Center for State Courts presented a conference in Indianapolis on Court Performance Standards, using CourTools, a measurement system designed to evaluate a court's performance. Attendees included Indiana appellate and trial court judges, and court personnel from around the country, who wanted to determine if CourTools was viable and valuable. CourTools evaluates a court's performance in:

- Access and Fairness
- Clearance Rates
- Time to Disposition
- Age of Active Pending Caseload
- Trial Date Certainty
- Reliability and Integrity of Case Files
- Collection of Monetary Penalties
- Effective Use of Jurors
- Court Employee Satisfaction
- Cost Per Case

It establishes standards and then compares those standards against the previous results. Each performance measure comes with step-by-step instructions on how to begin, conduct, and report your findings. CourTools may be found on the National Center for State Courts website at

www.ncsconline.org.

After selecting one of the ten performance areas, you can gather sample surveys, plug in your data and analyze your results. The National Center has staff available to assist you or you can call the Division of State Court Administration at (317) 232-2542.

The conference attendees learned about each measure. Then they were divided into ten groups, conducted a measurement study, and presented their results. The National Center recommends focusing on just one or two measurements at a time. By doing so, it will be easier to implement changes needed, if any, based on findings and recommendations.

Judge Gregory J. Donat, Tippecanoe Superior Court 4, was one of the presenters at the conference. He had measured the area of Access and Fairness, and specifically the courts' accessibility to and treatment of the public in Tippecanoe County. The judge surveyed the public over a two-year period.

The first year revealed two things:

1) the courthouse had Roman numerals identifying courtrooms and this confused the public because the printed instructions that sent them to their assigned courtroom had Arabic numerals; and

2) people entering the courthouse did not like using the same door as the prisoners.

The Tippecanoe County judges have implemented changes to address both of these perceived problems.

Judge Donat has already completed another measure and has posted his results on the CourTools website. Take a look at this site and decide if CourTools is right for your court. ■

By Angie James,
Court Analyst,
Division of State Court Administration

PHOTOS. Gérard Kremmer & Lai Leng Yiap

INDIANA SUPREME COURT

Annually Distributes More Than

$20 MILLION

in State Funds and Grants to Trial Courts and Related Programs

Through several enabling statutes and some federal funds, the supreme court is able to provide annually much needed fiscal assistance to trial courts for their operations and a number of related programs such as indigent defense and indigent civil legal representation. when totaled together, these amounts become a significant assistance for trial court operations. This article highlights several of those programs.

Court Improvement Grants

The US Department of Health and Human Services annually awards to applying states Court Improvement (CIP) grants that are intended to improve the judicial system for at-risk families and abused and neglected children in foster care. The federal grants are for a two-year period, based on the federal fiscal year of October through September. The Indiana Supreme Court is the beneficiary of three Court Improvement Program grants: 1) general court improvement projects; 2) court training projects; and 3) data sharing projects. The Supreme Court Executive Committee makes awards to local courts seeking assistance.

For fiscal year 2006-2008, the Court received $282,284 for general court improvement projects. The project goal is to assist courts in coordinating the administration of justice for families involved in multiple cases in the court system. The Supreme Court awarded a major portion of these funds to their Family Court Project.

The Court also received $215,688 for court training projects. The goal of the training grant is to improve collaboration between the governmental agencies and our courts in dealing with abused and neglected children. The Supreme Court awarded a portion of these funds for the first annual Indiana Summit on Children.

And, the Court received $215,534 for data sharing projects. The major objective of this grant is to improve Court performance by documenting and sharing the results of court efforts involving abused and neglected children.

Courts may apply for CIP grants completing a CIP Grant Application Form at courts.in.gov/cip/docs/apppacket/08grant-app.pdf or by contacting Nancy Gettinger, CIP Grants Administrator, Indiana Judicial Center, at 317-232-1313, or at ngetting@courts.state.in.us.

Civil Legal Aid Fund

The Civil Legal Aid Fund provides a total of $ 1.5 Million in biannual grants to qualified providers of civil legal aid to indigent Hoosiers. Distributions from the Fund are based on the proportion of civil filings in a county compared to statewide civil filings. Providers serving in each county share that county's Fund allocation. Eligibility for a grant is dependent on the provider submitting an opt-in form by May 2. During January 2008, the Fund distributed $750,000 in grants to 12 qualified legal aid providers. The next distribution is scheduled for July 2008.

Drug Court Grant Program

Sixteen drug courts were awarded $100,000 for FY 2008 through the Indiana Supreme Court Drug Court Grant Program administered by the Division of State Court Administration and the Judicial Center. The total amount of grants may yet increase, depending on availability of additional funds. This is the fifth year for the program through with the legislature provides funds to the Supreme Court to provide grants to drug courts. Since 2004, the Court has awarded approximately $350,000 to drug courts certified and established under IC 12-23-14.5. Drug courts may apply for up to $10,000 and may use these funds for personnel, chemical testing, treatment services, incentives, or evaluation services.

Family Court Project

The Supreme Court has awarded $208,000 in Family Court grants for 2008. Beginning in 2000, the first three pilot counties developed family court models under the administration of the Division of State Court Administration, with guidance from a statewide Family Court Task Force. Today there are twenty-three counties participating in the project. While all projects must include some type of judicial coordination of multiple case families, programming has expanded to include non-adversarial dispute resolution and other programming for high-risk, low-income, and/or pro se families. For more information about the Family Court Project, please visit the website at courts.in.gov/family-court.

Foreign Language Interpretation Grants

This year the Indiana Supreme Court has awarded $200,000 in Foreign Language Interpretation Grants to be used in 40 counties. Awards ranged from $750 to $21,500 and were distributed based on need, use of certified interpreters, and demonstrated dedication to improving foreign language services in the courts. The awards are part of the Supreme Court's continuing effort to improve access to justice by promoting the use of qualified interpreters. The emphasis on court interpretation gained momentum following a recommendation by the Supreme Court's Race and Gender Fairness Commission in 2000 to have Indiana join a national consortium that certifies qualified court interpreters. Since joining the consortium, 56 interpreters have been certified after passing a rigorous language examination process. Contact information for all of Indiana's certified interpreters can be found at courts.in.gov/interpreter/registry.html. The 2008 Grants will benefit the following counties: Allen, Brown, Cass, Clark, Clay, Clinton, Dearborn, Decatur, Elkhart, Floyd, Hamilton, Hancock, Hendricks, Howard, Jasper, Jay, Johnson, Lake, LaPorte, Madison, Marion, Monroe, Montgomery, Morgan, Noble, Ohio, Parke, Porter, Ripley, Rush, Shelby, Starke, Steuben, Tippecanoe, Union, Vanderburgh, Vigo, Wabash, Warrick, and Wayne.

The 2008 Grants will benefit the following counties: Allen, Brown, Cass, Clark, Clay, Clinton, Dearborn, Decatur, Elkhart, Floyd, Hamilton, Hancock, Hendricks, Howard, Jasper, Jay, Johnson, Lake, LaPorte, Madison, Marion, Monroe, Montgomery, Morgan, Noble, Ohio, Parke, Porter, Ripley, Rush, Shelby, Starke, Steuben, Tippecanoe, Union, Vanderburgh, Vigo, Wabash, Warrick, and Wayne.

GAL/CASA Matching Grants

The Supreme Court provides matching grants to counties to provide volunteer based Guardian ad Litem ("GAL") and Court Appointed Special Advocate ("CASA") services to children in abuse and neglect proceedings. Counties must be certified by the Supreme Court as being in compliance with the GAL/CASA Program Standards and Code of Ethics in order to be eligible for grant funds. The grants must be matched dollar for dollar with county tax dollars. The amount of each grant is based on the number of Child in Need of Services ("CHINS") cases in the county in the prior calendar year. The Supreme Court distributed $2,700,000 in matching grants to 64 counties in the 2007-2008 state fiscal year. For more information about GAL/CASA programs, please visit the State Office of GAL/CASA website at courts.in.gov/galcasa.

CAPTA Grants

Indiana became eligible for federal Child Abuse Prevention and Treatment Act ("CAPTA") funds for the first time in 2006. One of the main changes Indiana had to make in order to receive CAPTA funds was to change the law to require a GAL/CASA for every child in every CHINS case. This change required significant expansion of the GAL/CASA network and additional funding in order to serve every child. In order to assist with the expansion efforts needed to serve more children, the Department of Child Services ("DCS") agreed to provide $500,000 of the CAPTA funds it receives to the Indiana Supreme Court to distribute to GAL/CASA programs across the state. In 2007, the Supreme Court provided approximately $500,000 in CAPTA grants to 22 GAL/CASA programs serving 29 counties for the development of new programs and multi-county programs and will do so again in 2008.

Indiana Public Defense Fund

The Public Defense Fund was legislatively created in 1989 to reimburse Indiana counties for a portion of their costs for indigent defense in death penalty cases, and expanded in 1995 to include expenses for non-capital felony and juvenile cases. A Public Defender Commission of eleven members was formed to oversee the Fund and to develop qualifications for attorneys assigned to defend an indigent person facing the death penalty. Originally, the Public Defense Fund received an annual appropriation of $650,000. The Legislature has increased the amount of the Fund to cover the growing costs of indigent defense expenses. Today, the Public Defense Fund distributes $14.5 million dollars to program counties. On July 1, the appropriation increases to $15.25 million. The Public Defender Commission's website at courts.in.gov/pdc has more detailed information on the duties of the Commission, the amount of funds reimbursed to each county, Standards, Annual Reports, meeting minutes, and notices of Commission meetings. The Division of State Court Administration, under the direction of the Commission and Chief Justice, administers the fund. ■

EMPLOYEES: EXEMPT OR NON-EXEMPT

By Brenda Rodeheffer
Employment Law Services, State Court Administration

The difference between exempt and non-exempt employees was briefly mentioned in the last issue's article on the Fair Labor Standards Act. The FLSA, 29 U.S.C. § 201 et seq., requires that most employees be paid for every hour worked. Further, if an employee has worked more than forty hours in one week, normally the employee must be paid at the rate of one and a half times the usual rate for that time over forty hours. In the case of public employers, compensatory time may be substituted for monetary pay. The time and a half rate for compensation does not apply until and unless there has actually been more than forty hours worked. If an employee has worked three ten hour days, and then took a vacation day of eight hours, followed by an eight hour work day, the employee would be counted as only working thirty-eight hours. The employer would not be legally required to pay at the time and a half rate for the extra hours worked because the vacation time does not count towards the "forty hours in a week" threshold.

Exempt employees are employees who are exempt from the normal requirements of the Fair Labor Standards Act. Employers are neither required to pay for every hour worked for exempt employees, nor to pay the premium overtime rate of time and a half ever. Exempt employees are paid on a salary basis in which they receive the same pay regardless of how many hours they do or do not work in a week. If an employer wishes to give extra compensation, the employer may, but the employer is not legally required to do so.

There are several different categories of exempt employees, and the Department of Labor has promulgated extensive regulations to define what jobs may and may not be deemed exempt from the FLSA. What is not a test for exempt versus non-exempt? Your own assessment of how important the employee is to you does not determine whether the employee is exempt or not. How willing the employee is to work overtime does not make the employee exempt. A non-exempt employee cannot donate time to the employer.

In the courtroom setting, most bailiffs, court reporters, probation officers, and clerks will be non-exempt employees. There are "white-collar" exceptions that may apply to a court: the professional, the administrative, the executive, and certain computer personnel. Each one of these exempt categories will be discussed herein. It is vital to know whether a job is an exempt or non-exempt job. Exempt jobs will normally be the positions with high pay, significant responsibilities that must be completed regardless of the time it takes, and a high degree of independent decision-making. For such employees, the court budget could have a needless, serious negative impact if the exempt employee was misclassified as a non-exempt position. On the other hand, treating a non-exempt employee as an exempt employee is a violation of the FLSA with serious legal and financial consequences.

Professional exempt employees perform work in a field requiring knowledge of an advanced type. The advanced knowledge must be in a field of science or learning and the advanced knowledge must be customarily acquired through a prolonged course of specialized intellectual instruction. Fields recognized by the Department of Labor as traditional professions in the fields of science and/or learning are law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, pharmacy, and various types of physical, chemical and biological

PHOTO. Andres Rodriguez

sciences. This list is neither exclusive nor definitive. For example, a bookkeeper who simply tabulates data will not be an exempt employee, even if the bookkeeper is given the title and rank of accountant and has a business degree. The primary duty of such a bookkeeper does not require knowledge of an advanced type.

Executive exempt employees are those with a primary duty of managing the business or a recognized department or subdivision of the business. To meet this test, at a minimum the executive employee must supervise at least two other persons. The executive employee must also either have the authority to hire and fire employees, or his/her suggestions and recommendations must be given particular weight in hiring and firing decisions. The definition of management is not limited to supervision of other employees, but the supervision of others is a minimum requirement for this exempt category. The executive employee must have management in general as his/her primary duty.

Administrative exempt employees are those employees whose primary duty consists of the office work directly related to the management or general business operations of the employer. For this exemption, it must be determined whether the employee is primarily working on the employer's operation needs, or rather in the business function of the employer. In the court setting, an employee whose primary duty is keeping track of cases, scheduling, recording cases, and otherwise dealing with the functions of the court in dispensing justice will not be an administrative employee. An administrative exempt employee may at times work in these areas, but the administrative exempt employee's primary duty will be in business operations instead. Business operations are such areas as human resource management, budgeting, regulatory compliance, purchasing, and auditing. In addition to the requirement to have the primary duty as administrative, the administrative exempt employee must regularly exercise discretion and independent judgment in matters of significance.

The category of computer professional is a tricky area in the FLSA. At one time, computer work seemed so abstruse and specialized that all who worked on computers in any aspect were considered exempt. This is no longer accepted by the Department of Labor. To meet the computer professional test, the worker must have a primary duty that consists of application of systems analysis techniques and procedures; design, development, analysis, creating, testing or modification of computer systems or programs based on or related to the user or system design specifications; design, documentation, testing, creation or modification of computer programs related to machine operating systems, or a combination of the above. Such computer jobs as help desk personnel, instructors of software programs, and software technicians are not going to meet this test. Because the computer professional exemption is constantly being revised and is not always clear-cut, an employer should get an opinion from an attorney who practices in the area of employment law before classifying any computer staff as exempt.

THE DEPARTMENT OF LABOR HAS PROMULGATED EXTENSIVE REGULATIONS TO DEFINE WHAT JOBS MAY AND MAY NOT BE DEEMED EXEMPT

Each of the exempt status exceptions hinges upon a determination of the primary duty of the employee. It has often been said that the primary duty of an employee is the one that takes up fifty percent or more of the employee's time. However, this is not necessarily true; the answer is more complex than a time formula test. For the purpose of the FLSA, each employee has only one primary duty although that will be a broad duty. An employee who has a primary duty of either managing employees or administering office operations is an exempt employee, although the employee is also engaging in non-exempt activities. For example, many chief probation officers are executive exempt employees, even though they carry a partial caseload. Not all are exempt however. The determination is made by analyzing whether the primary duty of the employee is the exempt function or a non-exempt function.

The amount of time that an employee spends in particular duties is only one guideline in determining what the employee's primary duty is. The other three factors set forth in 29 CFR § 541.700 are the relative importance of the exempt duties; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees. The relative importance refers to the importance of the exempt-type duties in that particular employee's value to the employer, versus the importance of the non-exempt duties to the employer. A working foreman is not an exempt employee. An employee who assists the court with seeking grants, making required reports, preparing inventory, supervising other court staff, and assessing and implementing court operational needs, but who also assists in entering data in the court files, may well be an exempt executive or administrative employee. The other two factors in the test for primary duty are easier to analyze: how much freedom does the individual have to make his/her own discretionary decisions, and is the salary paid the individual commensurate with non-exempt staff or is it significantly higher?

This analysis is only a thumb-nail sketch of the FLSA law on exempt or non-exempt employees. It is provided as a tool for thought, rather than a resource to make an ultimate determination. Before any employer elects to treat an employee as exempt, an individual opinion from a qualified attorney should be sought first. ■

Trial courts can seek advice on exempt status for employees by contacting Brenda Rodeheffer directly at (317) 234-3926 or brodehef@courts.state.in.us.

INDIANA courttimes

Indiana Supreme Court
Division of State Court Administration
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MISSION

Our goal is to foster communications, respond to concerns, and contribute to the spirit and pride that encompasses the work of all members of the judiciary around the state. We welcome your comments, suggestions and news. If you have an article, advertisements, announcement, or particular issue you would like to see in our publication, please contact us by mail or email at jmaguire@courts.state.in.us.

Hear Ye, Hear Ye – Indiana Jury Orientation Video Updated

The "Indiana Jury Service: Duty, Privilege, Honor" video, originally produced in December 2003, has been updated to keep in step with Jury Rule amendments and court procedures. The video, which also includes a closed-captioning feature, is available in both VHS and DVD formats. Any trial judge or court personnel may request a copy of this video by contacting Michelle C. Goodman, Staff Attorney, Indiana Judicial Center, by phone at (317) 232-1313 or by email at mgoodman@courts.state.in.us. ■

Judicial Conference Ceases Publication of Maximum Fee Guidelines for Supervised Estates

The Judicial Conference Board of Directors approved a recommendation from the Probate Committee to no longer publish or endorse the 1994 Maximum Fee Guidelines for Supervised Estates, effective March 14, 2008. Over time, case law has established the requirements for determining reasonable attorney fees. Please check with the appropriate trial court regarding the procedures for submitting fee petitions. ■

PLEASE CIRCULATE TO CO-WORKERS

This newsletter reports on important administrative matters.
Please keep for future reference. Issues are also available online at:

courts.IN.gov/admin/court-times